

**Idha v Corpolongo**

2020 NY Slip Op 33398(U)

October 13, 2020

Supreme Court, Kings County

Docket Number: 510703/2019

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 510703/2019  
Motion Date: 8-10-20  
Mot. Seq. No.: 1

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OJO A. IDHA,

Plaintiff,

-against-

**DECISION/ORDER**

D. A. CORPOLONGO AND JUSTIN T. CORPOLONGO,

Defendants.

-----X

The following papers numbered 1 to 3 were read on this motion:

<b>Papers:</b>	<b>Numbered:</b>
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memo of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	3
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the plaintiff moves for an order pursuant to CPLR § 3212 granting plaintiff partial summary judgment against the defendants on the issue of liability and striking defendants' defense that the accident was partially the fault of the plaintiff.

This action arises out of a motor vehicle accident that occurred on April 6, 2017, at the intersection of Surrey Place & Midland Parkway, Jamaica, New York. In support of the motion, plaintiff submitted her own affidavit as well as a copy of the police report. Plaintiff stated in her affidavit that at the time of the accident, she was a back seat passenger in a motor vehicle that had stopped at the above intersection in in response to a stop sign when it was rear-ended by a vehicle owned by defendant D. A. CORPOLONGO and operated by defendant JUSTIN T.

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CORPOLONGO. She averred that the host driver had been stopped for at least thirty (30) seconds before the accident.

According to the police report, which identifies the defendants as the owner and operator of the rear vehicle, the host vehicle was not actually stopped. The police report describes the accident as follows:

AT TPO DRIVER 1 (THE HOST DRIVER) STATES HE WAS GOING STRAIGHT AHEAD AFTER STOPPING AT THE STOP SIGN WHEN VEHICLE 2 STRUCK THE REAR OF HIS VEHICLE. DRIVER 2 STATES VEHICLE 1 SUDDENLY STOPPED IN FRONT OF HIM CAUSING HIM TO STRIKE THE REAR OF VEEICLE 1.

Defendants did not submit any admissible proof in opposition to the motion. Defendants maintain that the motion is premature and should be denied in light of the conflicting version of the accident contained have a police report

“ ‘A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle’ ” (*Jimenez v. Ramirez*, 171 A.D.3d 902, 903, 98 N.Y.S.3d 131, quoting *Nsiah–Ababio v. Hunter*, 78 A.D.3d 672, 672, 913 N.Y.S.2d 659; see Vehicle and Traffic Law § 1129[a]). Hence, a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (see *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610, 891 N.E.2d 726; *Mihalatos v. Barnett*, 175 A.D.3d 492, 106 N.Y.S.3d 165).

Here, the plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability through the submissions of plaintiff's affidavit and the police report which reflect that the host vehicle was either stopped or stopping at the time of the accident (*see Lopez v. Dobbins*, 164 A.D.3d at 777, 79 N.Y.S.3d 566; *Nikolic v. City-Wide Sewer & Drain Serv. Corp.*, 150 A.D.3d 754, 755, 53 N.Y.S.3d 684; *see also Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898, 101 N.E.3d 366). In opposition, the defendants failed to set forth a nonnegligent explanation for the rear-end collision.

Plaintiff's motion is not premature as the defendants failed to demonstrate how further discovery might reveal or lead to relevant evidence, or that facts essential to oppose the motion were exclusively within the plaintiff's control (*see CPLR 3212[f]*; *Yiming Zhou v. 828 Hamilton, Inc.*, 173 A.D.3d 943, 103 N.Y.S.3d 472).

Finally, "[w]hile a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, vehicle stops which are foreseeable under the prevailing traffic conditions must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her vehicle and the vehicle ahead" (*Waide v. ARI Fleet, LT*, 143 A.D.3d at 976, 39 N.Y.S.3d 512; *see Taing v. Drewery*, 100 A.D.3d 740, 954 N.Y.S.2d 175). The defendant did not submit any admissible proof that the alleged short stop was unforeseeable under the prevailing traffic conditions. Accordingly, the description of the accident contained in the police report that the operator of the host vehicle came to a sudden stop was insufficient to raise a triable issue of (*see Arslan v. Costello*, 164 A.D.3d 1408, 1409–10, 84 N.Y.S.3d 229, 231; *Taing v. Drewery*, 100 A.D.3d at 741, 954 N.Y.S.2d 175).

The court has considered defendants' remaining arguments in opposition to the motion and find them to be without merit.

Accordingly, it is hereby

**ORDRED** that plaintiff's motion is **GRANTED** in all respects.

This constitutes the decision and order of the Court.

Dated: October 13, 2020

**PPS**

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**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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